

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-10305-LTS
)	
ONE 1993 BMW 325I VEHICLE)	
VIN WBABF431XPEK09579 AND)	
MASSACHUSETTS REG. NO.40HT40 ¹)	
)	
Defendant)	
)	

MOTION FOR FINAL JUDGMENT AND ORDER OF FORFEITURE

The United States of America, by its attorney Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby moves for entry of a Final Judgment and Order of Forfeiture, forfeiting one red 1993 BMW 325I, bearing Vehicle Identification Number WBABF431XPEK09579, and Massachusetts Registration No. 40HT40 (the "Defendant Vehicle").

In support of this Motion, the Government states the following:

On May 19, 2005, the United States filed a motion, pursuant to FRCP 55(a), for entry of default in the above-captioned action. This motion was accompanied by the affidavit of Jennifer H. Zacks, which is attached to the instant motion as Exhibit 1.

On September 22, 2005, this Court granted the United States' motion for entry of default in this action, based on the failure of Michael Mills or any other party to file a verified claim in this

¹The original caption of this case inadvertently stated an incorrect Massachusetts registration number. The current caption contains the corrected registration number.

civil forfeiture action. The United States is entitled to a judgment of default an order of forfeiture, for the reasons described in more detail in the attached affidavit of Jennifer H. Zacks and in the affidavit of Paul L.D. Russell, Jr., previously submitted to this Court in support of the United States' complaint in this civil forfeiture action.

WHEREFORE, the United States of America requests that this Court enter a Final Judgment and Order of Forfeiture, forfeiting the Defendant Vehicle. A proposed Order is attached.

Respectfully submitted,

UNITED STATES OF AMERICA
By its attorneys,

MICHAEL J. SULLIVAN
United States Attorney

By: */s/ Jennifer H. Zacks*
Jennifer H. Zacks
Assistant U.S. Attorney
1 Courthouse Way
Suite 9200
Boston, MA 02210
(617) 748-3100

Dated: October 6, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-10305-MLW
)	
ONE 1993 BMW 325I)	
VEHICLE IDENTIFICATION NUMBER)	
WBABF431XPEK09579 ¹ ;)	
REGISTRATION NUMBER 40RH40)	
)	
Defendant.)	

AFFIDAVIT IN SUPPORT OF
MOTION FOR ENTRY OF DEFAULT

I, Jennifer H. Zacks, state under oath as follows:

1. I am an Assistant United States Attorney. I represent the plaintiff, the United States of America, in this case. This is an action in Rem for forfeiture of the following defendant property:

One 1993 BMW 325I vehicle identification
number WBABF431XPEK09579; registration
number 40RH40;

(referred to as the "Defendant Property"). This is a civil forfeiture action, and, accordingly, is governed by the procedures set forth in the Federal Rules of Civil Procedure and in Rule C of the Supplemental Rules of Certain Admiralty and Maritime Claims.

2. The Defendant Property is subject to forfeiture pursuant to 21 U.S.C. §881(a)(4), in that the defendant property constitutes property used, or intended to be used, in any manner or part, to

¹ The original caption of this case inadvertently omitted one letter from the vehicle identification number. The current caption contains the corrected vehicle identification number.

commit, or to facilitate the commission of a criminal drug violation pursuant to 21 U.S.C. §§841 and/or 846.

3. The Verified Complaint for Forfeiture In Rem (the "Complaint") was filed in the United States District Court on or about February 15, 2005.

4. This Court found probable cause that the Defendant Property is subject to forfeiture to the United States, and issued a Warrant and Monition, on or about February 28, 2005, directing the United States Marshals Service ("USMS") to give notice to all persons concerned that a Complaint in Rem had been filed, and to arrest and retain the Defendant Property in its custody.

5. Notice of the United States' Complaint was published, in accordance with the Warrant and Monition, in the Boston Herald newspaper on March 15, March 22, and March 29, 2005. A copy of the USMS Process Receipt and Return form and the published notice are attached as Exhibit A.

6. A copy of the Verified Complaint and a certified copy of the Warrant and Monition were sent by certified mail to Michael Mills, 25 Verona Street, Lynn, MA 01904 on or about March 22, 2005, and via his attorney, Gerard R. LaFlamme, Jr., Esquire, 114 Kenoza Avenue, Haverhill, MA 01830, on or about March 16, 2005. Copies of the USMS Process Receipt and Return forms are attached as Exhibits B and C respectively. Michael Mills did not file either a verified claim or answer to the Complaint.

7. Under Supplemental Rule C(6) and 18 U.S.C. §983(a)(4), any person asserting an interest in the Defendant Property was required to file a claim not later than 30 days after the date of service of the Complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the Complaint. In addition, any person asserting an interest in the Defendant Property was required to file an answer to the Complaint no later than 20 days after the date of the filing of any claim.

8. As of today's date, May 19, 2005, no claims to the Defendant Property or answers to the Complaint have been filed and the time for filing such claims and answers has expired.

9. To the best of my knowledge, and upon information and belief, neither Michael Mills, nor anyone else with an interest in the Defendant Property, is in the military service of the United States, is an infant, or is incompetent.²

Signed under the pains and penalties of perjury this 19th day of May, 2005.

/s/ Jennifer H. Zacks
Jennifer H. Zacks
Assistant U.S. Attorney

² In order to determine Michael Mills' military status, the United States searched the Department of Defense Manpower Data Center using Michael Mills' name and social security number.

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ONE 1993 BMW 325I VEHICLE)	
VIN WBABF431XPEK09579 AND)	
MASSACHUSETTS REG. NO.40HT40 ¹)	
)	
Defendant.)	

FINAL JUDGMENT AND ORDER OF FORFEITURE

This Court having allowed plaintiff's Motion for Entry of Default and having issued a Notice of Default, it is hereby

ORDERED, ADJUDGED and DECREED:

1. That judgment be and hereby is entered in favor of the plaintiff, the United States of America;

2. That the defendant vehicle, described herein as one red BMW 325I, bearing Vehicle Identification Number WBABF431XPEK09579, and Massachusetts Registration No. 40HT40 (the "Defendant Vehicle"), is hereby forfeited to the United States of America pursuant to 21 U.S.C. §881(a)(4);

3. That any claim of interest of Michael Mills, and any other parties claiming any right, title, or interest in or to the Defendant Vehicle, is hereby held in default and dismissed, having been defaulted on September 22, 2005;

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4. That the United States of America, through the United States Marshals Service, shall retain the Defendant Vehicle in its secure custody and control, and shall dispose of it in accordance with law;

5. That this Court shall retain jurisdiction in this case solely for the purpose of enforcing the terms of this judgment; otherwise, this Order shall be, and hereby is, the full and final disposition of this civil forfeiture action.

APPROVED AND SO ORDERED:

LEO T. SOROKIN
United States Magistrate Judge

Date: _____, 2005